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CITATIONS

488700—42

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 400

THE LINEN THREAD COMPANY, LTD., PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 24–27) is unreported. The opinion of the Circuit Court of Appeals (R. 39–42) is reported in 128 F. 2d 166.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 1, 1942 (R. 43). Petition for rehearing (R. 44–48) was denied June 19, 1942 (R. 49). The petition for a writ of certiorari was

filed September 15, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner, a Scotch corporation, is taxable upon its 1937 and 1938 income as a resident corporation under subsection (b) of Section 231, Revenue Acts of 1936 and 1938, as contended by petitioner, or whether it is taxable as a nonresident corporation under subsection (a) thereof, as determined by the Commissioner and held by both the Board of Tax Appeals and the court below.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set ont in the Appendix, *infra*, pp. 9–12.

STATEMENT

The facts as found by the Board of Tax Appeals (R. 25–27) may be summarized as follows:

Petitioner was incorporated under the laws of Scotland, with its manufacturing plants and head office in Glasgow, Scotland. It holds large investments in the United States, Scotland, and other foreign countries, and sells its manufactured products to its wholly owned American subsidiary, The Linen Thread Company, Inc., a Delaware corporation (R. 25–26).

Petitioner filed federal income tax returns on a calendar year basis, for each of the years 1937 and 1938, with the Collector of Internal Revenue for the Third District of New York. The returns were executed by petitioner's officers in Glasgow, and sent to the United States for filing with the Collector of Internal Revenue. A withholding tax return was filed for the year 1937 by the taxpayer's American subsidiary, The Linen Thread Company, Inc., which disclosed a tax withheld of $50,305.36 on payments made to petitioner. This tax was paid to the Collector of Internal Revenue at Newark, New Jersey, on March 15, 1938. A withholding tax return was filed for the year 1937 by the American Thread Company disclosing a withholding tax paid to the Collector of Internal Revenue for the Second District of New York of $253.86 on income paid to petitioner. For the year 1938 a withholding tax return was filed by the American Thread Company, disclosing a tax withheld for petitioner of $257.25 and paid to the Collector of Internal Revenue for the Second District of New York. Petitioner paid an income tax for the year 1938 in the amount of $11,156.33 (R. 26).

William J. MacInnis was the resident agent of petitioner and held a power of attorney-in-fact for petitioner in the United States. For over thirty years he had been connected with petitioner's

American subsidiary, as salesman, factory manager, and vice president.[1] As resident agent, he receives the dividends from petitioner's investments in the United States, consisting of shares of stock of the American Thread Company, United Shoe Machinery Corporation, and The Linen Thread Company, Inc., and also the interest due petitioner by its American subsidiary on indebtedness incurred in the purchase of goods in Scotland. Petitioner's resident agent deposits the money so received in a New York bank, pays the rent and taxes, and remits the balance to petitioner at Glasgow. He files federal and state tax returns, looks after petitioner's investments and any changes in the general business or in products or material which would affect petitioner, such as the new "nylon." Petitioner does not engage in business in the United States and its activities in the United States are confined entirely to those stated above (R. 26–27).

In 1937 petitioner's resident agent had an office in the Central Hanover Bank Building, New York City, and in December 1937 moved into the Chanin Building at 122 East 42d Street, New York City, where he rents a room on a monthly basis, the lease naming petitioner as tenant. During 1938

[1] Petitioner states (Pet. p. 6) that this connection terminated prior to 1937. The record does not show this to be so, nor does it show whether or not MacInnis is still employed by the American subsidiary.

the resident agent maintained this office in the Chanin Building. Petitioner employed no clerk or stenographer at this office, but called on the owners of the building for such service when required. Petitioner's name appears on the office door and in the New York City telephone book. The office is furnished, and a ledger, journal, and cash book, to record receipts and expenditures, are maintained there. There were never any official meetings of directors or officers of petitioner at the office in New York City, and no contracts of sale or other business activities were carried on there, but petitioner's managing director came to the office in 1937 and another director once stopped there en route from Australia to Scotland (R. 27).

The Commissioner held that petitioner was a nonresident foreign corporation, taxable as such, and determined deficiencies for the years 1937 and 1938 accordingly. Upon review, the Board of Tax Appeals sustained the Commissioner and the court below affirmed.

ARGUMENT

This case presents the same question as *Aktiebolaget Separator* v. *Commissioner,* 128 F. 2d 739 (C. C. A. 2d), certiorari denied, October 12, 1942, No. 309, present Term, and we submit that the instant petition should be denied for the same reasons as set forth in our brief in opposition in that case.

Petitioner refers (Pet. 9–10) to a statement purportedly made by the Treasury Department to

the House Committee on Ways and Means in connection with the 1942 revenue bill to the effect that under present law (Sec. 231 of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code) foreign corporations can obtain classification as residents by establishing a nominal office or place of business in the United States. The statement is not included in the formal printed hearings of the Committee. Moreover, we are informed that it was not made by any representative of the Treasury Department, but that it appeared in an informal, unofficial memorandum prepared by someone not connected with the Treasury Department for the use of the members of the House Committee. The statement is inconsistent with the official regulations (Article 231–1 of Treasury Regulations 94 and 101, and Sec. 19.231–1 of Treasury Regulations 103). Furthermore, neither the House nor the Senate Finance Committee report (see Appendix) contains any such assertion with respect to the existing law, although counsel for petitioner urged the Senate Committee to incorporate such language in its report. Senate Hearings on H. R. 7378, 77th Cong., 2d sess., pp. 926–929. In the circumstances, that statement is entitled to no weight.[2]

[2] The statement in both the unofficial explanation relied on by petitioner and a portion of the Senate committee report (see Appendix) to the effect that under present law a foreign corporation may be regarded as resident even though it is not engaged in a trade or business in the United States, is consistent with the opinion below which recognized that to be the law (R. 41).

Petitioner asserts a conflict (Pet. 11) with *Magruder* v. *Washington, Baltimore & Annapolis R. Corp.*, 120 F. 2d 441 (C. C. A. 4th), and *Manhattan Co.* v. *Commissioner*, 297 U. S. 129, but no such conflict exists. Neither case relates to the instant statute. Moreover, the *Washington, Baltimore & Annapolis R. Corp.* case, a capital stock tax case, was reversed by this Court, 316 U. S. 69, which approved the regulation there in question. The *Manhattan Co.* case stands for the proposition that regulations are not valid unless reasonable and consistent with the statute they purport to interpret; the instant decision is in harmony with that rule. Indeed the court below cited the decisions of this Court in both of those cases in support of its conclusion (R. 42) that the instant regulations are valid.

Section 53 (b) (2) of the Revenue Act of 1938,[5] to which petitioner alludes (Pet. 12), specifies the time and place for the filing of returns and contains nothing at variance with our position here.

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[5] SEC. 53. TIME AND PLACE FOR FILING RETURNS.

* * * * *

(b) *To Whom Return Made—*

* * * * *

(2) *Corporations.*—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

CONCLUSION

The decision is correct; there is no conflict; the petition should be denied.

Respectfully submitted.

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